



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2004

Mr. Lawrence W. Jackson
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2004-2780

Dear Mr. Jackson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198796.

The City of Palmer (the "city"), which you represent, received a request for information relating to traffic citations issued during a specified period of time by any city police officer, certain city operating budgets, and specified memoranda. You claim that some of the requested information is not subject to the Public Information Act (the "Act"). You indicate that some of the requested information does not exist.¹ We have considered your arguments and have reviewed the submitted representative sample document.²

¹ We note that it is implicit in several provisions of the Act that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. See Attorney General Opinion H-90 (1973); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975); *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed). A governmental body must only make a good faith effort to relate a request to information which it holds. See Open Records Decision No. 561 at 8 (1990).

² We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this

Initially, we note that the city states that it sought clarification and/or narrowing of the request from the requestor with respect to items three and four of the request. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). Based on our review of your representations, it does not appear that the city had received the requested clarification and/or narrowing from the requestor as of the date that it requested a ruling from us with regard to this request for information. Accordingly, we conclude that the city need not respond to items three and four of the request for information, until it receives the requestor's clarification. We note, however, that when the city does receive the clarification and/or narrowing, it must seek a ruling from us before withholding from the requestor any information that may be responsive to these items of the request. *See* Open Records Decision No. 663 (1999) (providing for tolling of ten business day deadline for requesting attorney general decision while governmental body awaits clarification).

You claim that the information that is responsive to items one and two of the request for information constitutes judicial records that are not subject to the Act. We note that the Act only applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). It does not apply to records of the judiciary. *See id.* § 552.003(1)(B). Information that is "collected, assembled or maintained by . . . the judiciary" is not subject to the Act. *See id.* § 552.0035(a); *see also* Tex. Sup. Ct. R. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ); Open Records Decision No. 646 (1996) at 4 ("function that a governmental entity performs determines whether the entity falls within the judiciary exception to the Open Records Act."). You indicate through your representations that the information that is responsive to items one and two of the request for information is maintained solely by the city's municipal court acting in its judicial capacity. Based on your representations and our review of the submitted information, we, thus, agree that the information that is responsive to items one and two of the request for information constitutes judicial records of the city's municipal court that are not subject to disclosure under the Act.³ Accordingly, we conclude that the city need not release to the requestor any information that is responsive to items one and two of the request for information. *See* Attorney General

office.

³ We note, however, that records of the judiciary may be public pursuant to other sources of law. Attorney General Opinions DM-166 at 2-3 1992) (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974); *see Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released).

Opinion DM-166 (1992); *see also* Open Records Decision No. 618 (1993) (acknowledging common-law right to copy and inspect certain judicial records).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

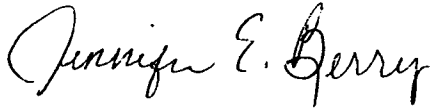
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer E. Berry". The signature is fluid and cursive, with the first name "Jennifer" being more prominent.

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/lmt

Ref: ID# 198796

Enc. Submitted document

c: Mr. Matthew Nancarrow
102 E. 26th Street
Bryan, Texas 77803
(w/o enclosures)